

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-213205**DATE:** February 6, 1984**MATTER OF:** Central Air Service, Inc.**DIGEST:**

Protest to GAO concerning solicitation defect is untimely where firm protested to the contracting agency prior to the closing date for receipt of proposals but did not protest to GAO within 10 working days after closing occurred. Where agency does not take corrective action requested, closing constitutes initial adverse action on the agency-level protest.

Central Air Service, Inc. protests the language of a provision in request for proposals (RFP) 49-83-05 issued by the Forest Service for air tanker services. According to Central, the agency improperly intends to construe the provision, which concerns standards for employing maintenance personnel, to permit the contracting officer to require the discharge or suspension of maintenance personnel that he personally dislikes, without regard to merit.

In response, the Forest Service says the disputed language is intended to afford it the right to disapprove employment of a mechanic or use of a repair facility where it appears, based on ample evidence, that Federal Aviation Administration regulations and standards are not being applied. However, the Forest Service also contends that the protest is untimely. We agree, and we therefore dismiss the protest.

Central initially filed a protest with the Forest Service on the closing date for receipt of proposals. It is not clear whether the protest was received before or after the time set for closing. If it was received after closing, it was untimely because section 21.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 21 (1983), requires that a protest based upon an alleged impropriety in an RFP be filed with the contracting agency (or the General


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Accounting Office) prior to the closing time for receipt of proposals. In that case, pursuant to section 21.2(a) of our Procedures, we would not consider the protest subsequently filed in our Office.

If, however, Central's agency-level protest was timely, the protest to our Office, not filed until 3 weeks after the closing date, nevertheless is untimely. Section 21.2(a) of our Procedures requires that if a protest is filed initially with a contracting activity, a subsequent protest to this Office must be filed within 10 working days after the protester has "actual or constructive notice of initial adverse agency action." The quoted phrase is a term of art that is construed to include knowledge that the agency proceeded with a bid opening or closing in the face of the protest. Bernard Franklin Company, B-207126, May 3, 1982, 82-1 CPD 414; Bird-Johnson Company--Request for Reconsideration, B-199445.3, October 14, 1980, 80-2 CPD 275. Since the protest to our Office was filed more than 10 working days after closing occurred, the protest is late under section 21.2(a).

We recognize that Central did protest to our Office within 10 working days after its receipt of a letter from the Forest Service formally denying the firm's protest to that agency. The fact that an agency later formally denies an agency-level protest, however, does not alter a firm's responsibility to conform to the filing requirement of section 21.2(a) in protesting to our Office. Bird-Johnson Company, B-199445, July 18, 1980, 80-2 CPD 49.

The protest is dismissed.

  
Harry R. Van Cleve  
Acting General Counsel